

### **DETAILED ACTION**

This is in reference to communication received 27 March 2008. Claims 1 – 3, 7 – 13 and 15 – 19 are pending for examination.

### ***Response to Arguments***

Applicant's arguments and concerns are for amended claims which have been responded to in response to pending amended claims.

In response to applicant's argument that Whirlpool article does not describe or suggest establishing a product personality for a product series. The photograph does show several related kitchen appliances that have a similar or complementary appearance, but this is different than "establishing a product personality for a product series" as required by the claims. The photograph only demonstrates that it is known to make a series of complementary appearing appliances.

However, Whirlpool reference visually demonstrates manufacturing of set of kitchen appliances having similar looking product personality. It is old and known to one of ordinary skill in the art that Whirlpool makes set of appliances having similar look so that they appear to be a set under different brands which have different personalities. For example, appliances sold under Kitchen aid brand may have different personality than appliances sold under Whirlpool brand which may have different personality for products sold under OEM Brand like Kirkland sold by Costco.

In response to applicant's argument that Examiner appears to be under the impression that merely making matching appliances is sufficient to render the claims obvious. Cited references do not teach to establish product personality.

However, as responded to earlier, It is old and known to one of ordinary skill in the art that Whirlpool makes set of appliances having similar look so that they appear to be a set under different brands which have different personalities. For example, appliances sold under Kitchen aid brand may have different personality than appliances sold under Whirlpool brand which may have different personality for products sold under OEM Brand like Kirkland sold by Costco. Also, it would have been obvious at the time of invention to one of ordinary skill in the art that Whirlpool did not just go and make products under different brands without creating product personalities to differentiate one brand from another and maintain the differentiating personalities for their plurality of brands.

In response to applicant's argument that cited references do not teach creating a perceptual map having a plurality of axes that are exclusive and differentiated.

However, it is old and known to one of ordinary skill in the art that in design meetings, participants use matrix to document level of importance for plurality of factors to identify or rank factors based on identified importance.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 3, 7 – 13 and 15 – 18 are process claims which are directed to a process being used to make a product comprising a number of steps. Neither the preamble nor the steps recite use of machine to perform those steps. Hence it would be logical to assume that the steps could be performed by either a machine or human.

Not every "process" in the dictionary sense is a "process" under § 101. The Supreme Court has defined a "process" as involving a transformation of subject matter to a different state or thing, *id.* at 1398-1401, where the transformation of physical subject matter involves technology.

Based on Supreme Court precedent<sup>1</sup> and recent Federal Circuit decisions, A "process" under § 101 must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.<sup>2</sup> If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to nonstatutory subject matter

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)

<sup>2</sup> *The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. Gottschalk v. Aenson*, 409 U.S. 63, 71 (1972)

In the instant case a human generates a design for a group of products having similar look so that they look as a set of products like appliances. For example, kitchen appliances having similar look so that they look as a set. In the invention as currently claimed, a human taking a paper and pencil draws the blue print for group of products within a family of products (e.g. kitchen appliances with quality and feature expectations of plurality of brands); draws the area exposed to the consumers so that they will look as belonging to the same family (differentiating aesthetics for each of plurality of brands); finalizing the design to generate final design blue print for the product; and then using the generated final design blue print for manufacturing the product. Thus the claimed invention does not meet the "process" requirement under § 101.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 3, 7 – 13 and 15 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whirlpool Corporation in view of Abelow US Patent 5,999,908.

**Regarding claim 1**, Whirlpool teaches one or more product like appliances made by a process by:

establishing a product personality for a product series [Whirlpool, page 4]. Even though Whirlpool does not explicitly teach establishing a product personality for a product series by creating a perceptual map, however, Abelow teaches concept for establishing a product personality for a product series by creating a perceptual map that have plurality of exclusive and differentiated axes (how to embed a new type of product feature within a range of products, helping them evolve into Customer Directed Products by means of Development Interactions; Employ a matrix table in which each row is a product feature and each column is a particular type of use of that feature; then each row and column intersection becomes a counter). One of ordinary skill in the art can use Abelow matrix and document feedback from participating meeting members document their input for plurality of combination of features [Abelow, col. 56, lines 30 – 36; Summary of Invention, uses market research, online surveys].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whirlpool by adopting and using teaching of Abelow to help the manufacturers produce customer directed products, combine prior art elements according to known methods to yield predictable results, apply a known technique to a known method or product ready for improvement to yield predictable results.

Whirlpool in view of Abelow teaches concept for:

correlating the product personality with a visual characteristic of the product series as viewed by a consumer [Whirlpool, page 4];

making a design the product based on the correlation (Whirlpool teaches designing family of products like matching kitchen appliances) [Whirlpool, page 4].  
Abelow teaches concept for correlating the product personality with a visual characteristic of the product series as viewed by a consumer, and designing the product based on the correlation [Abelow, col. 9, lines 18 – 28];

making the product in accordance with the design.

**Regarding claim 2**, Whirlpool in view of Abelow teaches concept and capability for establishing at least one personality characteristic of the product series [Whirlpool, page 4].

**Regarding claim 3**, Whirlpool in view of Abelow teaches concept and capability for assigning at least one adjective to the personality characteristic [Whirlpool, page 4].

**Regarding claim 7**, Whirlpool in view of Abelow teaches concept and capability for selecting a configuration for at least a component of the product (e.g. handle).

**Regarding claim 8**, Whirlpool in view of Abelow teaches concept and capability for selecting a texture of at least a component of the product series (stainless finish, painted finish etc.).

**Regarding claim 9**, Whirlpool in view of Abelow teaches concept and capability for selecting an architecture of at least a component of the product series (stainless steel front, white front etc.).

**Regarding claim 10**, Whirlpool in view of Abelow teaches concept and capability for selecting a brand identifier of the product series (e.g. KitchenAid, Kirkland Brand appliances manufactured by Whirlpool for Costco, reference provided earlier to the applicant).

**Regarding claim 11**, Whirlpool in view of Abelow teaches concept and capability for the brand identifier comprises a logo (e.g. KitchenAid Logo).

**Regarding claim 12**, Whirlpool in view of Abelow teaches concept and capability for establishing at least one personality characteristic of the product.

**Regarding claim 13**, Whirlpool in view of Abelow teaches concept and capability for assigning at least one adjective to the personal characteristic.

**Regarding claim 15**, Whirlpool in view of Abelow teaches concept and capability for selecting a brand to create a brand identifier.

**Regarding claim 16**, Whirlpool in view of Abelow teaches concept and capability for correlating the brand identifier with a predetermined appearance of at least a component of the product series.

**Regarding claim 17**, as responded to earlier in response to claims 1 – 3, 7 – 13 and 15 – 16, Whirlpool teaches one or more product like appliances made by a process by:

establishing desired brand personalities for a series of products [Whirlpool, page 4];

Even though Whirlpool does not explicitly teach establishing a brand personalities mapping customer perception of brand personalities, however, Abelow teaches concept for establishing a product/brand personality for a product series by creating a perceptual map that have plurality of exclusive and differentiated axes (how to embed a new type of product feature within a range of products, helping them evolve into Customer Directed Products by means of Development Interactions; Employ a matrix table in which each row is a product feature and each column is a particular type of use of that feature; then each row and column intersection becomes a counter). One of ordinary skill in the art can use Abelow matrix and document feedback from participating meeting members document their input for plurality of combination of features [Abelow, col. 56, lines 30 – 36; Summary of Invention, uses market research, online surveys].



Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whirlpool by adopting and using teaching of Abelow to help the manufacturers produce customer directed products, combine prior art elements according to known methods to yield predictable results, apply a known technique to a known method or product ready for improvement to yield predictable results.

Whirlpool in view of Abelow teaches concept and capability for:

correlating visual characteristics of the brand personalities to a desired brand [Whirlpool, page 4];

determining visual characteristics of the desired brand [Whirlpool, page 4]; and making a design of a product appearance in response to the visual characteristics of the desired brand [Whirlpool, page 4], Abelow teaches concept for correlating the product personality with a visual characteristic of the product series as viewed by a consumer, and designing the product based on the correlation [Abelow, col. 9, lines 18 – 28];

making the product using the design.

**Regarding claim 18**, as responded to earlier in response to claims 1 – 3, 7 – 13 and 15 – 17, Whirlpool teaches concept for creating brand equity in a series of products by establishing desired brand personalities for a series of products [Whirlpool, page 4]:

Whirlpool does not explicitly teach assigning desired personality adjectives to a current brand, the brand including a series of products. However, Abelow teaches

concept for assigning desired personality adjectives to a current brand, the brand including a series of products [Abelow, col. 9, lines 18 – 28].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whirlpool by adopting and using teaching of Abelow to help the manufacturers produce customer directed products, combine prior art elements according to known methods to yield predictable results, apply a known technique to a known method or product ready for improvement to yield predictable results.

Whirlpool in view of Abelow teaches concept and capability for:

associating a plurality of images and a plurality of dominant personality traits to generate an association between the plurality of images with the plurality dominant personality traits [Whirlpool, page 4];

correlating the association of the images and traits with the adjectives to generate an image adjective profile [Whirlpool, page 4];

creating a brand visual characteristic by plotting the association on a perceptual map that have plurality of exclusive and differentiated axes (how to embed a new type of product feature within a range of products, helping them evolve into Customer Directed Products by means of Development Interactions; Employ a matrix table in which each row is a product feature and each column is a particular type of use of that feature; then each row and column intersection becomes a counter). One of ordinary skill in the art can use Abelow matrix and document feedback from participating meeting

members document their input for plurality of combination of features [Abelow, col. 56, lines 30 – 36; Summary of Invention, uses market research, online surveys];

abstracting a design from the plot and the image adjective profile to create a brand visual identifier [Whirlpool, page 4];

making the series of products using the brand visual identifier.

**Regarding claim 19**, as responded to earlier in response to claims 1 – 3, 7 – 13 and 15 – 18, Whirlpool teaches series of appliances wherein appliances include refrigerator

Whirlpool does not explicitly teach appliance having an appearance with a visual characteristic correlated to a predetermined product personality. However, Whirlpool teaches appliance having an appearance with a correlated visual characteristic. Abelow teaches concept for appliance having an appearance with a visual characteristic correlated to a predetermined product personality established by creating a perceptual map having plurality of axes that are exclusive and differentiated [Abelow, col. 9, lines 18 – 28; col. 56, lines 30 – 36; Summary of Invention, uses market research, online surveys]

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whirlpool by adopting and using teaching of Abelow to help the manufacturers produce customer directed products, combine prior art elements according to known methods to yield predictable results, apply a known

technique to a known method or product ready for improvement to yield predictable results.

Whirlpool in view of Abelow teaches:

a first appliance having an appearance with a visual characteristic correlated to a predetermined product personality; and

a second, different appliance having an appearance with a similar visual characteristic correlated to the product personality, the similar visual characteristic to include color.

### ***Conclusion***

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Naresh Vig/  
Primary Examiner,  
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